

Calendar No. 1351

77TH CONGRESS }
2d Session }

SENATE

{ REPORT
No. 1305 }

CHARLES BRAUCH

MAY 6 (legislative day, APRIL 30), 1942.—Ordered to be printed

Mr. HUGHES, from the Committee on Claims, submitted the following

REPORT

[To accompany S. 2251]

The Committee on Claims, to whom was referred the bill (S. 2251) for the relief of Charles Brauch, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendments:

On page 1, line 6, strike out the figures "\$3,500" and insert "\$1,639.75".

On page 1, line 7, after the word "for" insert "damages and".

The bill, as amended, provides for the payment of \$1,639.75 to Charles Brauch in full settlement of all his claims against the United States for damages and personal injuries suffered by him as a result of an automobile accident which occurred on the Pacific Highway about 3 miles south of Sutherlin, Oreg., on July 31, 1940, when the truck which he was operating was struck by a truck owned by the United States and operated by the United States Army.

The War Department has no objection to the enactment of legislation compensating the claimant in such amount as the Congress may deem proper.

The records of the War Department show that on July 31, 1940, at about 11:15 a. m., a United States Army truck, on official business in connection with the Fourth Army maneuvers, was proceeding in a convoy in a northerly direction on United States Highway No. 99, 1½ miles south of Sutherlin, Oreg., at a speed variously estimated at from 12 to 30 miles per hour and approaching a right-angle turn (right for the Government driver). At about the same time a truck and trailer owned and operated by Charles Brauch, Roseburg, Oreg., with trailer loaded with logs, with William Corder and William Dale Witcher as passengers, approached the same turn from the opposite direction at a speed of about 15 miles per hour. The weather was clear and the roadway good. Visibility around the turn is obstructed in both directions by buildings and trees. At the approach to the turn from the south two caution signs, one reading "Slow," and one

displaying an arrow warning of the proximity and direction of the turn. At a point just north of the turn, the two vehicles collided head-on.

As a result of the accident, the civilian truck was practically demolished; William Dale Witcher sustained a fracture of the first and second cervical vertebra, which resulted in his instant death; William Corder received four incised wounds on one foot; and Mr. Brauch sustained a scratch 5 inches long through the second layer of skin over the right scapula, a large bruise with hemorrhage into the tissues along the spine between the scapulae, extensive contusions to both knees, with hemorrhage into the tissue along the patellae, a sprained right wrist, a bruised sternum about the region of the fifth rib, and an injury to the sacroiliac joint. A recent medical report indicates that there is a partial permanent disability involving the sacroiliac junction and that there is no probability of improvement in the future.

Incidentally, bills for the relief of the estate of William Dale Witcher, and William Corder, the other occupants of the truck, have been approved by the President.

It is further shown by the evidence that the Government driver was tried by court martial for manslaughter and found guilty on August 30, 1940. In view, however, of the evidence tending to show that the Government vehicle had been partially thrown to the left by an obstruction in the road—namely, a drain pipe—which evidence was not before the court martial, the unexecuted portion of the sentence adjudged was remitted and the soldier was honorably restored to duty.

It is the view of the War Department that the injuries sustained by Mr. Brauch resulted from no fault or negligence on his part, but rather from negligence on the part of the Government driver in that he rounded a sharp curve at too great a speed for the proper control of his vehicle.

Additional facts will be found in the following communications, which are appended hereto and made a part of this report.

WAR DEPARTMENT,
Washington, February 28, 1942.

Hon. PRENTISS M. BROWN,

Chairman, Committee on Claims, United States Senate.

DEAR SENATOR BROWN: The War Department will interpose no objection to the enactment of S. 2251, Seventy-seventh Congress, second session, a bill for the relief of Charles Brauch, in such amount as the Congress may deem proper, in full settlement of all his claims against the United States for personal injuries suffered by him as a result of an automobile accident which occurred on the Pacific Highway, being United States Highway No. 99, about 3 miles south of Sutherlin, Oreg., on July 31, 1940, when the truck he was operating was struck by a United States Army truck.

On July 31, 1940, at about 11:15 a. m., a United States Army truck, on official business in connection with the Fourth Army maneuvers, was proceeding in a convoy in a northerly direction on United States Highway No. 99, 1½ miles south of Sutherlin, Oreg., at a speed variously estimated at from 12 to 30 miles per hour and approaching a right-angle turn (right for the Government driver). At about the same time a truck and trailer owned and operated by Charles Brauch, Roseburg, Oreg., the trailer loaded with logs, with William Corder and William Dale Witcher as passengers, approached the same turn from the opposite direction at a speed of about 15 miles per hour. The weather was clear and the roadway good. Visibility around the turn is obstructed in both directions by buildings and trees. At the approach to the turn from the south there are two

caution signs, one reading "Slow," and one displaying an arrow warning of the proximity and direction of the turn. At a point just north of the turn, the two vehicles collided head-on.

As a result of the accident, the civilian truck was practically demolished. William Dale Witcher sustained a fracture of the first and second cervical vertebrae, which resulted in his instant death; William Corder received four incised wounds on one foot; and Mr. Brauch sustained a scratch 5 inches long through the second layer of the skin over the right scapula and severe bruises and abrasions.

Under date of September 30, 1940, Dr. B. R. Shoemaker, of Roseburg, Oreg., submitted the following statement concerning the injuries suffered by Mr. Brauch:

"Charles Brauch, age 24 years, injured July 31, 1940: First attended at Mercy Hospital about 12 o'clock noon. Examination showed a scratch 5 inches long by $\frac{1}{8}$ inch wide extending the entire length of the right scapula. A large bruise with hemorrhage into the tissues along the spine between the scapulae. The right wrist was bruised and an area of skin about 1 inch in diameter was removed from the right ulna in the wrist. Both knees were contused and showed hemorrhage into the tissues near the patellas. Complained of soreness over the sternum about the region of the fifth rib. The wrist was X-rayed and showed no fracture. Careful examination of his chest, knees, and right scapula showed no fracture of any of these bones. He suffered considerable pain and it was necessary to give him one-quarter grain of morphine by hypo to relieve this pain. Diagnosis was a sprained right wrist and generalized body bruises. He was seen at intervals following the accident, and on September 24, 1940, was discharged for work as of September 25, 1940. He still complains of pain in his back on heavy lifting, which is a part of his work. The right wrist has improved, although here, again, strain of heavy work still causes pain. I consider him, at this time, fully recovered."

The Government driver testified that as he was rounding the turn in question, on his proper side of the road, the right front wheel "went into a slight dip" on the side of the road, that the wheels "shimmied" and jostled the steering wheel through his hands, which at the same time were moist with perspiration, and that the momentum carried the truck out over the line; that while he was trying to get it back onto his proper side of the road the two vehicles met head-on; that he had applied his foot brakes, but that they did not hold in time to help, and that he did not have time to use his hand brake. He further testified that after the accident an inspection made by him of the curve revealed a drain pipe protruding from the asphalt, which pipe he believed had caused the truck to pull to the left, throwing the vehicle out of control. With respect to the Government driver's testimony in this connection, the officer who investigated the accident subsequently caused a car to be driven at a speed of 25 miles per hour around the curve and turned sharply, so that the right rear wheel would strike the gravel shoulder on the inside of the curve. He observed that when the right rear wheel struck the gravel it scraped against the drain pipe and that the front of the car was thrown to the left, causing the vehicle to go over the center line. He also observed that 10 out of 14 vehicles which he watched rounding the curve, at speeds not in excess of 30 miles per hour, crossed to the left of the center line.

Mr. Brauch testified that he was proceeding toward the curve at a speed of about 15 miles per hour until he observed the approach of the Government vehicle, when, realizing that said vehicle could not be safely maneuvered around the curve, he applied his brakes and had slowed down to a speed of about 6 miles per hour when the two vehicles collided; and that owing to the slow speed at which his truck was moving it was impossible for him to avoid the accident.

The Government driver was tried by court martial for manslaughter and found guilty on August 30, 1940. In view, however, of the evidence tending to show that the Government vehicle had been partially thrown to the left by an obstruction in the road, namely, the drain pipe above referred to, which evidence was not before the court martial, the unexecuted portion of the sentence adjudged was remitted and the soldier was honorably restored to duty.

A joint claim was filed with the War Department for the damage to Mr. Brauch's truck by Mr. Brauch and the General Exchange Insurance Corporation, Portland, Oreg., as subrogee, in the amounts of \$50 and \$454, respectively. Upon review, the claim was approved for settlement under the provisions of the act of December 28, 1922 (42 Stat. 1066), it being the view of the Department that the proximate cause of the accident was negligence on the part of the Government driver in that he rounded a sharp curve at too great a speed for the proper control

of his vehicle. Later, another claim was filed with the Department by Mr. Brauch in the total amount of \$543.33, made up of the following items:

Loss of time of truck (6 days)-----	\$154. 08
Substitute driver-----	225. 00
Removing logs from highway-----	15. 00
Changing equipment from demolished truck to new truck-----	49. 25
Pain and suffering, personal injuries-----	100. 00
Total-----	543. 33

This claim was approved by the Department for settlement under the above-cited act in the amount of \$64.25 only, which covers the items for removing logs from highway and changing equipment from demolished truck to new truck. However, that part of the claim which covered loss of time of truck, hire of substitute driver, and pain and suffering was disapproved. It was the view of the Department with respect to the item for loss of time of truck, that this item is more in the nature of a claim for loss of net profits that might have inured to the claimant had he maintained his business at the same daily average for the 6 days in question as that estimated for the previous 17 working days, and that the assertion that he would have worked continuously for the next 6 days after the accident is not supported by other evidence. The claims for pain and suffering growing out of personal injuries and the hire of a substitute driver were necessarily disapproved, for the reason that there is no provision of law or appropriation available to the War Department for the settlement of claims of this character. Mr. Brauch has not yet agreed to accept the approved amount of \$64.25.

Mr. Brauch states that he has made no claim for hospitalization, medicines, or doctor's bill, since he carried insurance covering these items.

Legislation for the relief of Ivan Richard Witcher and Nellie Witcher, for the death of their son, William Dale Witcher, killed in the accident in question, and for the relief of William Corder, injured, was enacted in the Seventy-seventh Congress, first session (private laws 235 and 241, approved December 15, 1941, and December 19, 1941, respectively).

It is the view of the War Department that the injuries sustained by Mr. Brauch resulted from no fault or negligence on his part, but rather from negligence on the part of the Government driver. Therefore, while not prepared to pass upon the exact amount that should be allowed him under the circumstances, the Department will, as above stated, interpose no objection to the enactment of legislation compensating him in such amount as the Congress may deem proper.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

AFFIDAVIT OF CHARLES BRAUCH

STATE OF OREGON,

County of Douglas, ss:

I, Charles Brauch, being first duly sworn, depose and say that I am a resident of Roseburg, Douglas County, Oreg., a citizen of the United States of America and by occupation a truck logger, and formerly operated my own logging truck and trailer.

On July 31, 1940, I was operating my 1938 model GMC T-16 logging truck with attached Trombly trailer, both loaded with logs, on the Pacific Highway, United States No. 99, in a southerly direction near mile post 187, approximately 1¼ miles south of Sutherlin, Oreg.; one William Corder and one William Dale Witcher were riding as passengers in the cab of my said truck at said time; that as my said truck approached a sharp curve to the left near said mile post 187, it was struck in collision by a 1940 model GMC truck, which was one of the units of a United States Army convoy traveling northerly on said highway, said Army truck bearing license plate of the United States Army No. W412682; that at the time of said collision I was driving and operating my said truck and trailer wholly to my right of the center line of said highway, which highway at said point was more than 16 feet in width, with graveled shoulders extending for some distance on either side; that said Army truck failed to negotiate the curve, crossed the center line of said highway, and crashed into the front portion of my truck; that said Army truck at the time of impact was entirely on my half of the highway; that upon the impact, the motor and dashboard of my truck were pushed backward and the logs were moved forward through the back of the cab, whereby

said William Dale Witcher was killed, said William Corder was injured and I received severe personal injuries; that my truck was equipped with hydraulic brakes and my trailer was equipped with air brakes, and that I set the brakes on both truck and trailer just prior to the impact, and that the trailer and truck were moving slowly at the moment of the collision.

That the impact of the collision dazed me, and it took me some time to extricate myself from between the back of the cab and the steering wheel, which had been driven up against my chest; an Army officer who identified himself as Sergeant Rongen, approached me and asked me if I was injured. I replied: "There are two men in the cab—get them out before it burns." After assisting in removing the two passengers from the truck, I was taken to the hospital at Roseburg, Oreg., for treatment of my injuries; my said injuries consisted of severe and painful bruises of both knees, a sprained right wrist, injury to my chest, various bruises, and a wrenched and twisted back; that when I arrived at the hospital, the physician, Dr. B. R. Shoemaker, of Roseburg, Oreg., gave me morphine to relieve my pain; that I was confined to my bed for approximately 1 week after the accident, and for about 6 weeks after the accident both knees were sore and stiff, making locomotion very difficult. For a period of approximately 3 months I had severe pains in my chest and that for a period of about 2 months after the accident I could not even so much as ride in an automobile without suffering pain from my waist up; that my right wrist was weak, sore, and stiff for approximately 6 months after the injury, and gave me severe shooting pains in my right arm when I attempted to lift anything; that my right shoulder gave me trouble for about 3 months after the accident, and was practically useless during that period; that ever since said accident, I have suffered from the injuries to the lower back region, which my physician says is a sacroiliac injury. That although I have since returned to work, I have found it extremely difficult to carry on. I cannot make any quick movement, change the tires on my truck, or do any of the heavy work involved in my line of work, and I have found it necessary to depend upon fellow workmen to do these things for me. After sitting in my truck, or even in a chair for any length of time, I find it extremely difficult to assume an erect position on account of the severe pain in my back; that my back injuries have shown no improvement during the past year, and I am advised by my physician that there will in all probability be no future improvement and that I will have a permanent back injury.

That during the year 1940, my physician advised me that, in his opinion, my injuries, although painful, would not be permanent, and permitted me to return to my work; that in the month of October 1940, I submitted a claim to the War Department for the sum of \$100 in payment of damages for my personal injuries; that this claim was submitted in that amount because I was advised by a local attorney that the sum of \$100 was the only sum which could be allowed by the United States for personal injuries, no matter how serious; that I was thereafter advised by the War Department that no sum could be allowed by that Department for personal injuries; that in all probability I would have made no further claim on account of my injuries had not the passage of time shown that the injuries were and are in fact permanent and have and will continue to severely hamper me physically in earning my living, and will continue to cause me great discomfort and pain.

CHARLES BRAUCH.

Subscribed and sworn to before me this 11th day of February 1942.

[SEAL]

DANIEL P. KEOHANE,
Notary Public for Oregon.

My commission expires March 27, 1943.

STATE OF OREGON,
County of Douglas, ss:

I, William Corder, being first duly sworn, on oath depose and say that I am a resident and inhabitant of Douglas County, Oreg., and a citizen of the United States of America, and of the age of 40 years; that on July 31, 1940, at about 11:15 a. m. on said day, I was a passenger in a certain 1938 model GMC truck owned and operated by one Charles Brauch, of Roseburg, Oreg. That one William Dale Witcher was also a passenger in said truck at said time. That said William Dale Witcher was riding in the center of the cab and I was riding on the extreme right side of the cab cushion. That at said time and place said truck had a trailer attached thereto and both truck and trailer were carrying a load of logs along

United States Highway No. 99, proceeding to Roseburg, Oreg. That while said truck at said time was proceeding southerly on said United States Highway No. 99 and approaching a sharp curve to the left, near mile post 187, a collision occurred between said truck and a certain 1940 model GMC truck which was one of the units of a United States Army convoy traveling northerly on said United States Highway No. 99, which said 1940 model GMC truck bore United States Army No. W412682. That the truck in which I was riding at the time of the collision with said Army truck was wholly upon the right side of the road. That said Army truck failed to negotiate the turn which we were approaching, crossed the center line of said highway, and crashed into the front portion of the truck in which I was riding. The Army truck at the time of the impact was entirely over on the same side of the road as the truck in which I was a passenger. The truck in which I was riding was equipped with hydraulic brakes and the trailer with pneumatic brakes. Charles Brauch, the driver of the truck, set the brakes prior to the impact. The truck and trailer were moving slowly at the time of the collision. Immediately upon the impact the motor and dashboard of the truck in which I was riding was pushed backward, and the back of the cab was pushed forward. That said William Dale Witcher by reason thereof was fatally injured, I was injured, and the driver of the truck, Charles Brauch, was also injured. I was dazed by the shock of the collision and, when I recovered sufficiently, I observed that William Dale Witcher was dead and that Charles Brauch was injured. A short time thereafter Charles Brauch was taken to the hospital in Roseburg, Oreg., for treatment of his injuries. From my observation he seemed to be in severe pain. I do not know of my own knowledge the extent of his injuries, although from my observation at the time of the accident it seemed apparent that he was severely injured.

That in my opinion said collision was caused solely by the negligence of the driver of said Army truck, and through no fault of the driver of the truck in which I was riding.

WILLIAM CORDER.

Subscribed and sworn to before me this 11th day of February 1942.

[SEAL]

DANIEL P. KEOHANE,
Notary Public for Oregon.

My commission expires March 27, 1943.

STATEMENT OF DR. B. R. SHOEMAKER

STATE OF OREGON,
County of Douglas, ss:

I, B. R. Shoemaker, being first duly sworn, depose and say that I am a practicing physician of Roseburg, Douglas County, Oreg.; that on July 31, 1940, at about 12 o'clock noon I was called to Mercy Hospital, in Roseburg, Oreg., to attend one Charles Brauch, aged 24 years, who had been injured in an accident arising out of the collision of his logging truck with an Army truck. Examination showed a scratch 5 inches long by one-eighth inch wide extending the entire length of the right scapula, a large bruise with hemorrhage into the tissues along the spine between the scapulae, extensive contusions to both knees, with hemorrhage into the tissue along the patellae, a sprained right wrist, a bruised sternum about the region of the fifth rib, and an injury to the sacroiliac joint. An area of skin about 1 inch in diameter was removed from the right ulna on the wrist. The patient was suffering intense pain and it was necessary before we could proceed with examination to give him one-fourth grain of morphine by hypo. An X-ray examination of the wrist showed no fracture and careful examination of his chest, knees, and scapulae showed no fracture of any of those bones. Diagnosis at that time was a sprained right wrist, generalized body bruises, and sacroiliac injury. He was ordered to bed and remained there for approximately 1 week. Thereafter I examined him weekly until September 24, 1940. The patient complained of considerable soreness in the right wrist and in the sternum for approximately 3 months, and soreness and stiffness to the knees for about 6 weeks. The hemorrhages cleared up in approximately 4 weeks. He continued to complain of pain, soreness, and stiffness in the sacroiliac area at all times during treatment and found difficulty in locomotion, especially after doing any work, after riding in an automobile, upon arising after sitting for any length of time, and after exercising in any manner. Upon examination on September 24, 1940, although the injury to the wrist and the sacroiliac injury were not healed, I permitted him to return

to work because of his insistence that it was absolutely necessary that he do so from a financial standpoint. I advised him however, to be extremely careful and to take things as easy as possible.

Further examinations following his return to work show that he had not recovered as much as we had thought. He states that it is extremely difficult for him to perform his usual work on the logging truck, and that he must depend on the help of others in order to perform his work. He is unable to engage in the heavy work involved in handling a logging truck without pain and stiffness in the sacroiliac area and in his wrist; his right wrist is still weak and he complains of soreness after using it in his work. The injury in the sacroiliac area has shown no improvement in the past year.

Recent examination discloses that deep pressure over the area of the sacroiliac joint results in severe pain over the entire length of the joint on both sides, which I have diagnosed as subluxation of the sacroiliac joint, chronic. No improvement has been made in the past year. In my opinion there is a partial permanent disability involving the sacroiliac junction and there is no probability of improvement in the future.

B. R. SHOEMAKER, M. D.

Subscribed and sworn to before me this 6th day of December 1941.

[SEAL]

DANIEL P. KEOHANE,
Notary Public for Oregon.

My commission expires March 27, 1943.

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Submitted and sworn to before me this 25th day of December, 1942.
 District Attorney
 Notary Public for Oregon
 My commission expires March 25, 1943.